STATE OF MICHIGAN

COURT OF APPEALS

MAGGIE LOTHARP, Plaintiff-Appellant, v KEVIN BEAL and MRS. KEVIN BEAL, Defendants-Appellants.	UNPUBLISHED August 9, 2005 No. 253291 Oakland Circuit Court LC No. 2002-045798-NO

Before: Whitbeck, C.J., and Sawyer and Fitzgerald, JJ.

PER CURIAM.

Plaintiff Maggie Lotharp appeals as of right from an order granting defendants Mr. and Mrs. Kevin Beal summary disposition pursuant to MCR 2.116(C)(10) in this premises liability action. We affirm. We decide this appeal without oral argument pursuant to MCR 7.214(E).

I. Basic Facts And Procedural History

Lotharp fell on the steps of a home that the Beals owned after attending a baby shower thrown by the Beals' tenant. Lotharp left the party at approximately 6:30 p.m. When Lotharp stepped down on the first step, she felt something under her foot, then she fell. She noticed that a small stone was on the first stair. The stairs did not have a railing. The trial court determined that the danger was open and obvious and that there were no special aspects of the condition that would have presented an unreasonable risk of harm.

II. Summary Disposition

A. Standard Of Review

We review de novo the trial court's decision on a motion for summary disposition.[1]

B. Open And Obvious

A landlord owes the social guests of a tenant those duties owed to invitees.[2] Generally, an invitor owes a duty to his invitees to exercise reasonable care to protect them from an

[1] *Maiden v Rozwood*, 461 Mich 109, 118; 597 NW2d 817 (1999).

[2] See *Petraszewsky v Keeth (On Remand)*, 201 Mich App 535, 540; 506 NW2d 890 (1993).

unreasonable risk of harm caused by a dangerous condition on the land.[3] However, this duty does not extend to dangers so obvious that an invitee can be expected to discover them himself.[4] Specifically, an invitor has no duty to eliminate or warn of open and obvious dangers unless he should anticipate the harm despite the invitee's knowledge of it.[5]

Whether a danger is open and obvious depends upon whether it is reasonable to expect an average user with ordinary intelligence to discover the danger upon casual inspection.[6] In determining whether a danger presents an unreasonable risk of harm despite being open and obvious, a court must consider whether special aspects exist, such as a condition which is unavoidable or which poses an unreasonably high risk of severe injury.[7] The determination must be based on the nature of the condition at issue, not on the degree of care used by the invitee.[8]

Although it was dark outside at the time Lotharp fell, the porch light was on. There was testimony that others had left the premises without incident. Lotharp, who had used the stairs on many occasions, could have discovered the danger upon casual inspection. There was nothing about the character, location or surrounding conditions of the steps that rendered them unreasonable. Therefore, because any dangers were open and obvious and no special aspect existed, defendants owed Lotharp no duty to protect her from those dangers.

Lotharp argues that defendants' failure to install a railing was violative of a city ordinance. However, this allegation deals with proximate causation, not duty.[9] Because defendants owed Lotharp no duty in this case, we need not reach the proximate causation issue.[10]

Affirmed.

/s/ William C. Whitbeck
/s/ David H. Sawyer
/s/ E. Thomas Fitzgerald

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[3] *Lugo v Ameritech Corp*, 464 Mich 512, 516; 629 NW2d 384 (2001).

[4] See *Williams v Cunningham Drug Stores, Inc*, 429 Mich 495, 500; 418 NW2d 381 (1988); *Ellsworth v Hotel Corp of America*, 236 Mich App 185, 195; 600 NW2d 129 (1999).

[5] See *Lugo, supra* at 516; *Riddle v McLouth Steel Products*, 440 Mich 85, 90-96; 485 NW2d 676 (1992); *Millikin v Walton Manor Mobile Home Park, Inc*, 234 Mich App 490, 495, 498; 595 NW2d 152 (1999); *Hughes v PMG Building, Inc*, 227 Mich App 1, 10; 574 NW2d 691 (1997).

[6] See *Weakley v Dearborn Hts*, 240 Mich App 382, 385; 612 NW2d 428 (2000).

[7] *Lugo, supra* at 516-517.

[8] *Id*. at 523-524.

[9] See *Corey v Davenport College of Bus*, 251 Mich App 1, 9 n 2; 649 NW2d 392 (2002).

[10] *Id*.